IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE ELEVENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

-

WRIT PETITION NO : 5331 of 1996

Between:

1. E.Radhakrishna Murthy (died) S/o. late E.Anajneyulu
   r/o. Tenali Guntur Dt.

2. Smt. E.Leelavathi, W/o. late E. Radhakrishna Murthy,
   R/o. 303 Sreyas APts., P.G.Road, Secunderabad.
   (Petitioner-2 is brought on record as LR of deceased sole petitioner as per

C.O.dt:31/72000 in WPMP 12208/2000)

..... PETITIONERS

AND

1. Addl.Industrial Tribunal-Cum-Addl.Labour Court, rep, by its Presiding Officer.
   Hyderabad.

2. Prakasam Dist. Coop, Central Bank Lt.d., rep.by its General Manager
   Ongole.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate writ and quash the Award of the 1st respondent in M.P NO.27/94 and consequently allow all the claims to the petitioner which were subject matter of M.P.No.27/94 and direct the 2nd respondent to pay all said claims along with the consequential benefits and grant such other relief as it deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.V.VENKATARAMANA

Counsel for the Respondents: MR.M.R.K.CHOWDARY

The Court made the following:

O R D E R:

The second petitioner is the legal representative of the original petitioner, who died after institution of the writ petition and who while in service was an employee of the Prakasam District Co-operative Central Bank Limited at Ongole.

2. The writ petition is directed against the Award dated 14.03.1995 passed by the Additional Industrial Tribunal, Hyderabad in M.P.No.27 of 1994. The said M.P was instituted by the petitioner under Section 33-C (2) of the Industrial Disputes Act, 1947, claiming:

a. An extra incremental benefit in the fixation of his pay in the promotional post of Category-III Manager to which post he was promoted with effect from 15/09/1977;

b. Full wages, increments and other benefits for the period of his suspension;

c. Pay and emolument benefits of 3 promotional posts which should have been granted to him during the period of his service; and

d. The benefit of difference in gratuity what has been granted to him towards his terminal benefits.

3. The petitioner retired from the service of the second respondent bank on 30-04-1985 on superannuation. The petitioner entered service in the District Co-operative Central Bank, Guntur in 1949 as a Supervisor-cum-Clerk. He was promoted to the Category-IV post of Accountant in the year 1962. Consequent on the formation of the second respondent bank by carving out certain branches of similar banks in Nellore, Guntur and Kurnool districts with effect from 27.10.1975, the petitioner's option for service under second respondent bank was accepted and he joined service in the second respondent bank in the same post of Accountant in which he was earlier working. On the terms of his allotment and option to the service of the second respondent bank, he was given the benefit of protection of his pay and seniority for

the earlier period of service.

4. Petitioner's juniors appear to have been promoted from Category-V to the posts of the Managers in Category-III in the second respondent bank. Aggrieved thereby the petitioner and others similarly aggrieved, filed M.P.22 of 1977 in I.D.No.8 of 1975 before the first respondent/Industrial Tribunal under Section 33 (a) of the Act. By an Award dated 28-05-1984, M.P.No.22 of 1977 was allowed, holding the promotion of the junior to the petitioner and others as invalid and declared that the petitioner and other claimants in M.P.No.22 of 1977 were entitled for promotion as Category-III Managers. The Labour Court also held that the petitioner was entitled for such promotion with effect from 15.09.1977 and that he was also entitled for the consequential incremental benefits on such promotion. Consequent on the Award of the Labour Court dated 28.05.1984 in M.P.No.22 of 1977 the petitioner was promoted as Manager in Category-III with effect from 15.09.1977 and was also given all the benefits as considered legitimately due to him, by the second respondent management. Nevertheless, the bank filed writ petition No.14318 of 1984 against the Award dated 28.05.1984. This writ petition was dismissed by the order of this Court dated 03.09.1991 and as a consequence the Award dated 28.05.1984 became final.

5. As all the benefits consequent to the Award dated 28.05.1984 were not granted to him, the petitioner got issued a legal notice to the second respondent bank. The second respondent bank did not respond. Aggrieved, the petitioner filed W.P.No.11852 of 1994 for a direction to the second respondent bank to implement the Award in M.P.No.22/1977. This Court by an interim order in the said writ petition, while declining grant of any interlocutory relief in favour of the petitioner herein, granted liberty to approach the Industrial Forum under Section 33 (C) (2) of the Act. In these circumstances the petitioner lodged M.P.No.27 of 1994.

6. The first respondent-Industrial Tribunal, by the Award dated 14.03.1995, rejected all the claims of the petitioner, except the claim relating to payment of difference in gratuity than, what was originally paid to him on his retirement.

7. It is represented by the learned Standing Counsel for the second respondent bank that in so far as the Award of the Labour Court relating to the gratuity benefits to the petitioner is concerned, the second respondent bank has not contested the Award and has paid him the benefits on that aspect of the Award. Other benefits claimed by

the petitioner are seen to have been rejected by the Labour Court, by the impugned Award, which is a very well considered Award, which has considered all material facts and relevant legal positions. The conclusions of the Labour Court are impeccable and warrant no interference. The Labour Court held to the extent relevant and material, as under:

> "The points in dispute between the parties are as follows:
>
> 1. Whether the petitioner is entitled to an extra increment at the time of fixation of pay in the promotional post 15.9.77?
> 2. Whether the petitioner is entitled to full wages and increments during the period of suspension ignoring the punishment given to him and the order passed with regard to the regularization of his period of suspension?
> 3. Whether the petitioner is entitled to the pay of 3 promotional posts during the period of his service?
> 4. Whether the respondent is estopped from contending that the petitioner is entitled to lesser amount having contended in the Writ Petition that the petitioner is entitled to an amount of Rs.70,000/-?
> 5. Whether the gratuity paid to the petitioner consequent upon his retirement is not correct and if so to what amount he is entitled to?
> 6. To what relief the petitioner is entitled?
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> POINT NO.1:
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> The petitioner was drawing a basic of Rs.648-00 as Category-IV accountant by 14-9-77. He was promoted as Category-III Manager with effect from 15-9-77 as per the Award of the Tribunal. The respondent fixed his basic pay at Rs.676-00, which is next stage in the scale of pay of the promotional post. The petitioner fixed his basic pay in the promotional post at Rs.712-00 in Ex.W-11 calculation memo. He contends that he is entitled to one more increment while fixing the pay in the promotional post. He did not show any provision of law in support of his contention. It is not covered by Ex.W-19 Award of the Industrial Tribunal, Hyderabad in I.D.13/67 which was published in the Gazette as per G.O.Ms.No.576, Home (Labour-I) dated 23.4.70 or Ex.W-4 settlement dt.4.3.81. The counsel for the petitioner relies upon F.R.22-B was incorporated in service Rules by G.O.Ms.No.239, finance & Planning dated 23.8.83 i.e., 6 years after the petitioner got promotion. I cannot agree with the contention of the learned advocate for the petitioner that this amendment to the Fundament Rules has retrospective effect. Hence this claim of the petitioner is rejected.
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> POINT NO.2:
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> The petitioner was under suspension from 22.6.79 to 9.7.81. A domestic enquiry was conducted and the petitioner was awarded the punishment of

stoppage of increment for one year with cumulative effect by Ex.W-9 order dt.9-7-81. The period of suspension is treated as leave to which he is eligible. The petitioner was paid subsistence allowance during the period of suspension. He had 75 days of earned leave to his credit but he was under suspension for 756 days. So, the Deputy General Manager (Bkg.) passed Ex.W-10 order dated 4.1.82 granting leave with full pay for 75 days from 25.6.79 to 4.9.79 and as leave on loss of pay for 681 days i.e., from 5.9.79 to 17.7.81. The petitioner having resumed service on 18.7.81 claims that he is entitled to full wages for this suspension period and that he is also entitled increments during this period. Suspension is not a punishment. The period of suspension shall be governed by the orders passed by the management. Though the petitioner intends to refer to the Fundamental Rules, this situation is covered by Chapter-III of Ex.W-19 Award passed by the Industrial Tribunal. Chapter-XIII (xi)(b) covers the present situation, which reads as follows:

"Pending such enquiry, he may be suspended, but if on the conclusion of the enquiry it is decided to take on action against him, he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension, and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages allowances etc.,"

As per the above clause, the management has got discretion to treat the period of suspension as on duty with the right to a corresponding portion of the wages allowances etc. The management evoked this right and regulated the suspension period of the petitioner, by treating the period for which he was earned leave or privilege leave, as leave with full wages and rest of the period as extraordinary leave i.e. without any wages.

The learned advocate for the petitioner also argues that the enquiry was unduly prolonged as mentioned in Ex.W-8 and it report dt.12.4.82. He should have raised an Industrial Dispute for payment of full wages at that time as the enquiry was prolonged for no fault of his, if this contention is true. The petitioner next contends that he preferred an appeal to the President of the Bank but the appeal is not disposed of till now and so it is presumed to be allowed. He did not produce any evidence of preferring an appeal. The Manager examined for the respondent pleads ignorance about the petitioner preferring an appeal. Chapter-XIII (xiii) refers to the appeals. No doubt, the appeal should be disposed within two months from the date of receipt of the appeal. But in this case, there is no evidence of the petitioner preferring an appeal. The petitioner also did not raise an industrial dispute for setting aside he punishment. There is no clause in the Award that an appeal not disposed of within 2 months, is deemed to be allowed. The learned advocate for the petitioner next contends that the petitioner was acquitted by the criminal court when a charge sheet was filed against him in connection with the charges for

which he was punished in the domestic enquiry. But he did not file a certified copy of the judgment of the criminal court. Even such a situation is covered by Chapter-XIII (ii) (c) and (d) and Chapter-XIII (iii) of the Ex.W-19 Award. Even in the case of acquittal, the management has got a right to terminate the services of an employee with 3 months pay and allowances in lieu of notice as per Chapter-XIII(ii)(c). In such a case only, he is entitled to full pay and allowances minus subsistence allowance. Chapter-III (iii) deals with cases where the employees who were suspended were not prosecuted. The petitioner did not bring out his case within the four corners of Chapter-XIII.

Even Fundamental Rules do not help to petitioner. F.R.24 (5)(a) as follows:

If a Government servant is suspended for misconduct, neither the period of suspension nor any period of service preceding the suspension shall be allowed to count towards the period necessary to earn an increment."

F.R.26(b)(ii) reads as follows:

All leave other than extraordinary leave and the period of deputation out of India shall count for increment in the time scale applicable to a post in which a Government servant was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India.

Provided that the Government may, in any case in which they are satisfied that the extraordinary leave was taken on account of illness or for any other cause beyond the Government servant's control or for prosecuting higher scientific or technical studies with an undertaking to serve the Government on return from leave for a period of at least 5 years, direct that extraordinary leave shall be counted for increment under clause (i) or (ii).

F.R.54-B reads as follows:

"(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement or superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order-

a. Regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be, and

b. Whether or not the said period shall be treated as a period spent on duty.

There is no reference to granting increments during the period, which is treated as extraordinary leave without, pay and allowances in the Award Ex.W-19. F.R.26-B(2) says that leave other than extraordinary leave shall count for granting increment in the time scale applicable to a post in which a Government servant is officiating at the time when he proceeded on leave.

The learned advocate for the petitioner relied upon the

decision of Allahabad High Court reported in "MRITUNJAI SINGH v. STATE OF U.P. (1971 (2) SLR.523) (extracted in page 337 of a commentary of Fundamental Rules) wherein it was held that increments have to be granted during the period of suspension as the contract of service subsists. It is only for payment of subsistence allowance. It does not effect the substantive principle that a Government Servant is not entitled to increments during the period in which he was on extraordinary leave. Hence, I hold that the petitioner is not entitled to full wages for the suspension period and increments for the period as substantive part of the suspension period was treated as extraordinary leave i.e., without wages.

POINT NO.3: The petitioner was promoted to Category-III Manager on 15.9.77. He claimed wages of the Assistant Secretary, Deputy Manager and Manager in between 1978 and 1985 as if he was promoted to the said posts or entitled to the promotion. His Contention is that his juniors by name V.S.Sarma and Kameswara Rao were promoted to the position of Deputy General Manager and that Sanjeevareddy was further promoted to the post of Manager and so he is entitled to the wages of the positions occupied by him. He claims that he joined the service of the Guntur Cooperative Central Bank in 1949 as a clerk-cum-supervisor whereas the above 3 persons joined as such much later. On the other hand, the learned advocate for the respondent contends that the above 3 persons were seniors to the petitioner in the category of Manager Category-III and so they were promoted. He also argued that the seniority in the category-III has only to be considered and not the seniority in the lowest post. We have sent for the registers of Sri Sarma, Sri Sanjeeva Reddy and SriKameswara Rao. We have found from the service registers that the said 3 persons were seniors to the petitioner in Category-III and so they are entitled for further promotions earlier than the petitioner. Finding this difficulty, the petitioner contends that they were illegally promoted in their respective banks and before they opted for the respondent bank and so their promotions are illegal. He also argues that fitment to the posts and fixation of seniority was not done as per the rules and that the Kurnool Bank from which Sri Sanjeeva Reddy has come is only a B-Grade bank. In this connection, he relied upon Ex.W-6 representation given by the Employees Union that as per Ex.W-7 G.O. promotion can be given to an employee during the pendency of disciplinary proceedings, Ex.W-17 the letter of the then Registrar for Cooperative societies to the respondent bank to prepare a list of seniority before giving promotions and also Ex.W-20 the judgment of the Addl.District Judge, Ongole in C.M.A.26/88 by which he directed the management to fix up the seniority before giving promotions. All these aspects can only be gone into, in an industrial dispute properly raised by the petitioner. They cannot be decided in a petition under Section 33-C(2) of the I.D.Act. The monetary benefits under an existing legal right can only be decided in a petition under Section 33-C(2) which is termed as an Execution petition by the Supreme court. The disputed questions cannot be decided in a petition under Section 33-C(2). It was so held in "Municipal Corporation of Delhi Vs. Ganesh Rajak and another" (1994 A.I.R. S.C.W. 5000). The learned

advocate for the petitioner relied upon “B.Babu Rao Vs. the Divisional Manager, APSRTC, Tirupathi and others” (1994 (2) An.W.R.170) in which it was held that a senior should be given promotion in preference to a junior though the latter is a direct recruit and though a particular vacancy is reserved for a direct recruit in the seniority list. The High Court in exercise of its original jurisdiction under Article-226 of the Constitution of India can pass such order. Similarly, an Industrial Tribunal and High Court can exercise the powers under Section 10 of the I.D.Act to pass such an order. But an Additional Industrial Tribunal or Labour Court exercising the powers under Section 33-C(2) of the I.D.Act cannot pass such an order.

Hence, this claim is rejected.

POINT NO.4:

The petitioner contends that the respondent admitted in its affidavit filed in support of the petition W.P.M.P.18859/84 in W.P.No.14318/84 for setting aside Ex.W-19 operation of the Award, that it has to pay Rs.70,000/ to the petitioner and so now it is estopped from contending that it need not pay any amount to the petitioner. The respondent answers that by mistake such an averment was made in the affidavit at that time and it does not come within the purview of the principle of estoppel. The principle can be invoked only when on a representation made by one party, the other party acts upon it and does something which is detrimental to his interest as per Section 115 of the Evidence Act. In this case, the petitioner has not done anything to his disadvantage on the representation made by the respondent bank. On the other hand, the petitioner gained by such a representation as the learned Single Judge of the High Court ordered for payment of half of the said amount and a Division Bench ordered for payment of Rs.25,000/-. The petitioner received the said amount of Rs.25,000/-. The respondent now contends that the petitioner was paid excess and he has to pay back Rs.16,000/- and odd and it appears that a suit was already filed for recovery of the said amount. The principle of estoppel does not apply to the facts of the case. Similarly, the decision in “Mst.Jagaribai V. Ramkhilawan and others” (A.I.R. 1976, M.P. 106) does not apply to the facts of the case.

Hence this contention is rejected.

POINT NO.5:

The petitioner was paid an amount of Rs.36,249/- towards the gratuity which is equivalent to 15 month pay and D.A. as his last drawn pay and D.A. were Rs.1556-60 + Rs.860/- = Rs.2416-60 by the date of retirement. It was paid in terms of Chapter-X of Ex.W-19 Award of the Industrial Tribunal. The petitioner contends that as per Item No.XXXIII of Ex.W-4 Bipartite settlement dt.4.3.81, between the management of the Cooperative Central Banks in A.P., he is entitled to gratuity as per the Gratuity Act that he served for 36 years and so

he is entitled to 18 months salary. It is true that as per Chapter-X of Ex.W-19 Award, the petitioner is entitled to gratuity at the rate of one month's pay for each year of service subject to a maximum of 15 months pay. As per item-XXXIII of Ex.W-4 settlement he is entitled to gratuity as per the Gratuity Act if the rules of the Gratuity Act are more favourable to him. Under Section 4(2) of the Gratuity Act, the employer shall pay gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of 6 months based on the rate of wages last drawn by the employee concerned subject to a maximum of 20 months. The explanation states that the 15 days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen. So, the petitioner is entitled to:

$$\frac{\text{Last drawn wages} \times 15 \times 36}{26}$$

In the definition of employee in the Gratuity Act, there is ceiling about the monthly wages. There is also a ceiling on the total amount that an employee can be paid towards gratuity. An employee means any person employed on wages not exceeding Rs.1,000/- p.m. as per 1972 Act. It was increased to Rs.1,600/- with effect from 1.7.84 as per Amendment Act 25/84. It was further increased to Rs.2,500/- by Amendment Act 22/87. The explanation to Section 2 (e) of the Gratuity Act reads that when the wages of the employee were less than the ceiling, for a particular period, that period can also be taken into consideration while determining the gratuity. Similarly there is a ceiling on the higher amount that can be paid as gratuity under the Gratuity Act, 1972. While it was 20 months wages under Section 4(3) of the Act, it was made Rs.50,000/- with effect from 1.7.84 as per Amendment Act 25 of 84.

As stated already, as per Chapter-X of the Award, pay shall mean basic pay, dearness allowance and special allowance last drawn. But as per the definition of the wages under Section 2-8 of the Gratuity Act, wages means emoluments which are earned by an employee in accordance with the terms and conditions of the employment and which are payable or are paid to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, over time allowance and any other allowances. Under these circumstances, the case of the petitioner has to be re-examined keeping in view the last pay drawn by he petitioner, the definition of the employee given in the Gratuity Act, the ceiling in the Gratuity Act, the definition of pay in the Award and the definition of wages in the Gratuity Act. It cannot be decided as to whether the application of the Award is favourable to the petitioner or application of the Gratuity Act is favourable to the petitioner, until the above exercise is conducted.

A direction has to be given to the respondent to decide gratuity payable to the petitioner under the Award and also under the Gratuity Act if it is applicable to

him and to give an offer to the petitioner to decide as to whether he opts for the Award or the Gratuity Act. The petitioner shall be paid the excess amount if any, found due to him, on his exercising the option.

POINT NO.6:

In the result, all the claims of the petitioner, except gratuity, are rejected. The respondent is directed to re-examine the amount payable to the petitioner towards the gratuity in the light of the observations made in the judgment within two months from today. Both the parties can approach this Court, if there is any doubt, about the calculation of the gratuity. The petition is ordered accordingly."

8. In view of the fact that the Award of Labour Court suffers from no infirmity either in the application of law, analysis of the factual and legal position or rationality of the reasons recorded for its conclusions, this Court discerns no cause for interference. This writ petition is without merits and is accordingly dismissed. No costs.

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GODA RAGHURAM,J

DATED 11th AUGUST, 2004.

BSB

To

1. The Presiding Officer, Addl. Industrial Tribunal-cum-Addl. Labour Court,Hyderabad.
2. The General Manager, Prakasam District Coop. Central Bank Ltd., at Ongole.
3. Two CD copies.